



Brian D. Nugent, Esq.
Feerick Nugent MacCartney PLLC
96 South Broadway
Nyack, New York 10960
845.353.2000

bnugent@fnmlawfirm.com

TO: Municipal Clients
DATE: December 11, 2021
RE: Recent Executive Order - Vaccine/Mask Mandate

As many of you are aware, in light of concerns with the spread of COVID variants and a winter surge, Governor Hochul recently announced new mask/vaccination requirements for all indoor public places (defined as “any indoor space that is not a private residence”). See NYSDOH Commissioner’s Determination on Indoor Masking Pursuant to 10 NYCRR 2.60 (December 10, 2021). The order becomes effective **Monday, December 13, 2021**. The Commissioner of Health’s determination imposes the following requirements for all indoor public places:

1. All persons, over age two and able to medically tolerate a face covering/mask, regardless of vaccination status, shall wear an appropriate face covering/mask while in any indoor public place.
2. This requirement shall not apply to any indoor public area that requires proof of vaccination as a condition of entry.¹
3. For purposes of this determination “indoor public place” shall mean any indoor space that is not a private residence.
4. This requirement shall be in effect until January 15, 2022.

Based upon this Determination, municipal governments have two choices:

Option 1: Impose a proof of vaccination² requirement as a condition of entry into public facilities for all persons over 12 years of age³; OR

Option 2: Require all persons 2 and older able to medically tolerate a mask/face coverings to wear one while in any indoor place.

¹ In accordance with CDC's definition, fully vaccinated is defined as 14 days past an individual's last vaccination dose in their initial vaccine series (14 days past the second shot of a two-dose Pfizer-BioNTech or Moderna vaccine; 14 days past the one-shot Janssen/Johnson & Johnson vaccine). The State also accepts WHO-approved vaccines for these purposes. Parents and guardians can retrieve and store an Excelsior Pass and/or Excelsior Pass Plus for children or minors under legal guardianship.

² Businesses/venues can accept [Excelsior Pass](#), [Excelsior Pass Plus](#), SMART Health Cards issued outside of New York State, full-course vaccination through [NYC COVID Safe app](#), a CDC Vaccination Card, or other official immunization record

³ Vaccines for children ages 5 – 11 have only been available since November 2021. Therefore, in order to enter a business or venue that implements a proof of vaccination requirement, children ages 5 – 11 only have to show proof of having had at least one dose of the COVID-19 vaccination.



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The Determination does not allow for a combination approach (*e.g. having those that show proof of vaccination entering the municipal building go without masks and those that lack such proof be required to wear masks in the same building*).⁴

From an administrative standpoint, Option 2 (masks for all) would likely require less municipal resources since there would not be a need for a staff member to check proof of vaccination upon entry. However, under Option 2, all persons (employee and visitors) would need to be masked at all times (other than when eating/drinking, etc). The Municipality would need to provide masks to employees. If applying **Option 1** (proof of vaccination), municipalities would need to have a process in place for checking such vaccination proof for employees and visitors. While proof of vaccination would typically be needed only once for employees, checking proof of vaccination for visitors would require continued review of such proofs of vaccination.

In the event that a municipal executive (Mayor/Supervisor) has declared a State of Emergency in a municipality, such executive could issue the order applying Option 1 or Option 2 immediately. Otherwise, the municipal board should determine the appropriate Option to be implemented. Municipal officials may confer individually in a manner consistent with Open Meeting Law requirements to come to a consensus on which Option to implement on December 13, 2021 and then ratify such determination by a Resolution at a later board meeting since **Option 1** or **Option 2** must be in place by **Monday, December 13, 2021**.

Employee Unions: For municipalities with union employees, since there is a choice involved between Option 1 and Option 2 and either option would implicate terms and conditions of employment, the municipality may be required to engage in impact negotiations if requested by the employee union. We note that this requirement does not mandate negotiations prior to implementation on December 13, 2021 (since a municipality must have one of these Options in place by Monday), but would require negotiations with respect to the impacts of the Option selected. If specific issues arise with compliance and or unpaid leave, etc., please contact our office for further guidance.

Accommodations for Medical/ Religious Reasons: In the event that a person may have a medical condition that would prevent them from wearing a mask and/or being vaccinated, the municipality will need to provide a reasonable accommodation consistent with law. Such situations are best handled on a case-by-case basis and we would recommend you contact our office for guidance if such situations arise.

For your convenience, attached please find draft resolution language to implementing either Option 1 or Option 2 described above. As always, if you need specific guidance, please contact our office.

⁴ The guidance does not address whether a municipality could apply different options at different municipal locations (e.g. requiring masks at the main municipal building but require proof of vaccination at a municipal recreation center).